

1
2
3
4
5
6
7

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

11 MAIGA HRALIMA,
12 Plaintiff,
13 vs.
14 JEROME POLAHA,
15 Defendants.

3:11-cv-00553-ECR-WGC

ORDER

17 Maiga Hralima, a prisoner at the Northern Nevada Correctional Center, has submitted
18 a Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (#2-1). The complaint is subject to the
19 provisions of the Prisoner Litigation Reform Act as discussed below.

20 || I. Screening Pursuant to 28 U.S.C. § 1915A

21 Federal courts must conduct a preliminary screening in any case in which a prisoner
22 seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28
23 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any
24 claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek
25 monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2).
26 Pro se pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901

1 F.2d. 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
 2 essential elements: (1) that a right secured by the Constitution or laws of the United States was
 3 violated, and (2) that the alleged violation was committed by a person acting under color of state law.
 4 *See West v. Atkins*, 487 U.S. 42, 48 (1988).

5 In addition to the screening requirements under § 1915A, pursuant to the Prison
 6 Litigation Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the
 7 allegation of poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on
 8 which relief may be granted, or seeks monetary relief against a defendant who is immune from such
 9 relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which
 10 relief can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the Court
 11 applies the same standard under § 1915 when reviewing the adequacy of a complaint or an amended
 12 complaint. When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave
 13 to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of
 14 the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
 15 F.3d. 1103, 1106 (9th Cir. 1995).

16 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel*
 17 *v. Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a
 18 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim
 19 that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In
 20 making this determination, the Court takes as true all allegations of material fact stated in the
 21 complaint, and the Court construes them in the light most favorable to the plaintiff. *See Warshaw v.*
 22 *Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a pro se complainant are held to less
 23 stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9
 24 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). While the standard under Rule
 25 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than mere labels
 26 and conclusions. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). A formulaic

1 recitation of the elements of a cause of action is insufficient. *Id.*, see *Papasan v. Allain*, 478 U.S.
 2 265, 286 (1986).

3 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if
 4 the prisoner's claims lack an arguable basis either in law or in fact. This includes claims based on
 5 legal conclusions that are untenable (e.g., claims against defendants who are immune from suit or
 6 claims of infringement of a legal interest which clearly does not exist), as well as claims based on
 7 fanciful factual allegations (e.g., fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S.
 8 319, 327-28 (1989); see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

9 **II. The Complaint**

10 Plaintiff's complaint claims he was arrested, charged, and convicted on the basis of
 11 "colossal legal mistakes" made by various officers of the court who colluded to knowingly and
 12 improperly act "without the authority or jurisdiction required." Plaintiff alleges that the wrongs,
 13 which occurred in 2002 and 2003, were caused when defendants Nevada District Judge Polaha,
 14 Deputy District Attorney Dan Greco, and defense counsel Jerome Wright, violated his rights under
 15 the Fifth, Sixth, Eighth and Fourteenth Amendments causing him emotional distress, loss of
 16 consortium, financial losses, and mental health injuries. Finally, "[t]he persuasive evidence
 17 necessary to support these allegations went undiscovered by the plaintiff until August of 2010."¹
 18 The specifics of the complaint follow:

19 Count I

20 Plaintiff alleges that on or about July 11, 2002, defendants Greco and Wright colluded
 21 to deprive him of his right to due process when they conspired together to deny him the necessary
 22 grand jury indictment or arraignment before a justice of the peace before committing him to face
 23 criminal charges.

24 Plaintiff asserts that he was held in the Washoe County Detention Facility's medical
 25

26 ¹ Plaintiff offers no explanation as to how the persuasive evidence came to light or why it was
 not available before.

1 housing unit in mental health segregation, being “treated unlawfully with anti-psychotic drugs” for at
2 least 57 days following his arrest until defendant Wright, without proper authority from plaintiff and
3 “with the knowledge that he had not been lawfully appointed to represent the plaintiff as his attorney
4 or record,” waived plaintiff’s preliminary hearing rights. Thereafter, defendant Greco filed an
5 Information against plaintiff in the district court, charging him with attempted murder and battery
6 with a deadly weapon.

7 Count II

8 Plaintiff claims defendant Second District Court Judge Jerome Polaha, as the
9 presiding judge, failed to prevent the unlawful acts alleged in count one and proceeded to arraign
10 plaintiff on the charges asserted in the Information without proper authority or jurisdiction.

11 Count III

12 Plaintiff complains the three defendants conspired to obtain a psychiatric commitment
13 for purposes of determining plaintiff’s competency to stand trial and then misrepresented the facts to
14 another district judge, obtaining a trial date and improperly enhancing the charge of attempted
15 murder to include an allegation of use of a deadly weapon. Plaintiff avers he then signed a guilty
16 plea memorandum to the charge of attempted murder with the use of a deadly weapon which was
17 unsupported by any “evidence in the record” and without having the proper competency hearing.
18 Plaintiff seeks compensatory and punitive damages and injunctive relief.

19 **III. Discussion**

20 Plaintiff’s complaint is fatally flawed. When a prisoner challenges the legality or
21 duration of his custody, or raises a constitutional challenge which could entitle him to an earlier
22 release, his sole federal remedy is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475
23 (1973); *Young v. Kenny*, 907 F.2d 874 (9th Cir. 1990), cert. denied 11 S.Ct. 1090 (1991). Moreover,
24 when seeking damages for an allegedly unconstitutional conviction or imprisonment, “a § 1983
25 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by
26 executive order, declared invalid by a state tribunal authorized to make such determination, or called

1 into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." *Heck v.*
 2 *Humphrey*, 512 U.S. 477, 487-88 (1994). "A claim for damages bearing that relationship to a
 3 conviction or sentence that has not been so invalidated is not cognizable under § 1983." *Id.* at 488.

4 Plaintiff, who remains incarcerated, makes no showing that his conviction or sentence
 5 have been rescinded or declared invalid. Moreover, the court takes judicial notice of plaintiff's
 6 previously filed petitions for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 and notes that
 7 they were unsuccessful.² Thus, plaintiff cannot obtain relief from the Court on the claims presented
 8 here.

9 Additionally, the defendants named in the complaint are entitled to immunity for the
 10 actions complained of. Judge Polaha and Deputy District Attorney Dan Greco are entitled to
 11 immunity based upon the nature of the functions they perform. *Buckley v. Fitzsimmons*, 509 U.S.
 12 259, 269 (1993); *Fry v. Melaragno*, 939 F.2d 832, 836 (9th Cir. 1991); *see also Tower v. Glover*,
 13 467 U.S. 914, 920 (1984); *Procunier v. Navarette*, 434 U.S. 555, 561 (1978). Judges are absolutely
 14 immune from damage actions for judicial acts taken within the jurisdiction of their courts. *Schucker*
 15 *v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam). Prosecutors are immune when they
 16 are acting pursuant to their official role as advocate for the State performing functions "intimately
 17 associated with the judicial phase of the criminal process." *Imbler v. Pachman*, 424 U.S. 409, 430
 18 (1976); *see also Kalina v. Fletcher*, 522 U.S. 118, 124-26 (1997). Actions such as seeking an
 19 indictment, dismissing charges, deciding whether and when to prosecute and preparing a case are
 20 considered part of the judicial phase of the criminal process. *See Hartnam v. Moore*, 547 U.S. 250,
 21 261 (2006); *Imbler* 424 U.S. at 431 n.33; *KRL v. Moore*, 382 F.3d 1105, 1112-13 (9th Cir. 2004).
 22 Prosecutorial immunity does not extend to those actions of a prosecutor which are "administrative"

24 ²*See Hralima v. Helling*, 3:06-cv-0303-LRH-RAM; *Hralima v. Benedetti*, 3:08-cv-0214-ECR-
 25 RAM, dismissed May 13, 2009, as untimely; *Hralima v. Benedetti*, 3:08-cv-0287-ECR-RAM, dismissed
 26 to pursue 3:08-cv-0214-ECR-RAM; *Hralima v. Benedetti*, 3:09-cv-0722-RCJ-RAM dismissed March
 9, 2010, as successive, certificate of appealability denied by Ninth Circuit.

The Court further notes that plaintiff has made previous attempts to bring these or similar claims
 against these defendants and he was advised that such actions are not viable under § 1983. See e.g.
Hralima v. Wright, 3:09-cv-708-ECR-RAM.

1 or “investigative” in nature, however. *See Hartman, v. Moore*, 547 U.S. at 261-62 n.8; *Buckley v.*
 2 *Fitzsimmons*, 509 U.S. 259, 271-73 (1993). Plaintiffs claims all relate to judicial rather than
 3 administrative actions of Deputy District Attorney Greco.

4 Defendant Wright, a court-appointed defense counsel, would not be acting under
 5 color of state law for purposes of a § 1983 action in his role as an advocate for plaintiff. *See Georgia*
 6 *v. McCollum*, 505 U.S. 42, 53 (1992); *Polk County v. Dodson*, 454 U.S. 312, 321 (1981) (public
 7 defenders not acting under color of state law because their conduct as legal advocates controlled by
 8 professional standards independent of the administrative directions of a supervisor.) Thus, it is quite
 9 likely, even if plaintiff could show that his conviction and sentence had been overturned on appeal or
 10 in post-conviction proceedings, he would be unable to hold these defendants to answer his claims.

11 Finally, the events which give rise to the claims occurred in 2002 and 2003. The
 12 statute of limitations for section 1983 actions brought in Nevada is two years. NRS 11.190(4)(e);
 13 *Perez v. Seavers*, 869 F.2d 425, 426 (9th Cir.), *cert. denied*, 493 U.S. 860 (1989). Plaintiff’s attempt
 14 to overcome this limitation period by baldly claiming he only recently discovered persuasive
 15 evidence to support that allegations is ineffective. *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758,
 16 760 (9th Cir. 1991) (A federal claim accrues when the plaintiff knows or has reason to know of the
 17 injury which is the basis of the action.) Here, plaintiff knew of the acts of which he complains in
 18 2002 and 2003. His claims expired in 2005 at the latest. This complaint is barred by the statute of
 19 limitations.

20 This complaint shall be dismissed for failing to state a claim upon which relief may
 21 be granted. The Court finds that plaintiff has, on at least two previous occasions, had matters
 22 dismissed because they fail to state a claim. *See See e.g. Hralima v. Wright*, 3:09-cv-708-ECR-RAM
 23 and 3:04-cv-0523-LRH-RAM. Pursuant to 28 U.S.C. § 1915(g), the Court advises plaintiff that in
 24 any future civil actions he may bring, he will not be permitted to proceed *in forma pauperis* and will
 25 be required to pay the full filing fee unless he can show that he is in imminent danger of serious
 26 physical injury.

1 **IT IS THEREFORE ORDERED** that the Clerk shall detach and file the complaint
2 (ECF No. 1-1) which is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which
3 relief may be granted.

4 **IT IS FURTHER ORDERED** that this action constitutes plaintiff's third "strikes"
5 under 28 U.S.C. § 1915(g), making him ineligible for *in forma pauperis* status in future civil actions.

6 **IT IS FURTHER ORDERED** that any appeal of this decision would not be taken in
7 good faith.

8 The Clerk shall enter judgement accordingly.

9 Dated this 4th day of October, 2011.

10 
11

12 UNITED STATES DISTRICT JUDGE

13
14
15
16
17
18
19
20
21
22
23
24
25
26